

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 01-00078 DAE
)	
Plaintiff,)	
)	
vs.)	
)	
GARY WAYNE RODRIGUES, (01))	
ROBIN HAUNANI RODRIGUES)	
SABATINI, (02))	
)	
Defendants.)	
_____)	

ORDER DENYING DEFENDANT
GARY W. RODRIGUES' MOTION TO DELAY MITTIMUS

Pursuant to Local Rule 7.2(d), the Court finds this matter suitable for disposition without a hearing. After reviewing Defendant Rodrigues's motion and the supporting and opposing memoranda, the Court DENIES Defendant's Motion to Delay Mittimus.

BACKGROUND

Defendant Gary Wayne Rodrigues was sentenced on September 30, 2003, more than four years ago. This Court did not order Defendant into custody at that time and instead granted his motion for release pending appeal. Defendant Rodrigues filed a notice of appeal that same day. On June 11, 2007, the Ninth

Circuit affirmed the jury's verdict and ordered a limited remand pursuant to United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005). Defendant petitioned the Ninth Circuit for a rehearing. The Ninth Circuit denied Defendant's petition for rehearing and petition for rehearing en banc on August 21, 2007. Defendant then filed a motion for a stay of mandate with the Ninth Circuit. On September 24, 2007, the Ninth Circuit denied Defendant's motion for a stay of mandate. The mandate was issued on September 27, 2007.

After receiving written submissions from the parties, this Court affirmed Defendant's sentence on October 31, 2007, and set the mittimus for January 7, 2008. On December 7, 2007, Defendant Gary W. Rodrigues filed the instant motion to delay mittimus. (Doc. # 347) The Government filed an opposition on December 11, 2007.

DISCUSSION

Defendant requests that his mittimus be stayed from January 7, 2008, to April 1, 2008. Defendant seeks this extension of time because he plans to file a petition for writ of certiorari in the United States Supreme Court. Defendant also states there are two civil cases pending against him and that he will need to testify at trial in both cases. One of the civil cases is set for trial on January 15, 2008, and the other is set on March 11, 2008.

Defendant's arguments do not persuade this Court to further delay his mittimus. With respect to Defendant's claim that his mittimus date should be extended because he will be filing a petition for writ of certiorari with the Supreme Court, 18 U.S.C. § 3143 provides that the court

shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--
(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in--

(i) reversal,
(ii) an order for a new trial,
(iii) a sentence that does not include a term of imprisonment, or
(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

Defendant has presented no argument or evidence that he meets any of the above standards. Indeed, this Court is not aware of the basis of the petition for writ of certiorari. Therefore, this Court cannot determine if it raises a substantial question of law or fact that is likely to result in reversal or some other ruling beneficial to Defendant.

Defendant's testimony for his trial and assistance to his counsel may be obtained in several ways, despite Defendant's incarceration. Therefore, Defendant has presented no good reason for a delay of his mittimus. Accordingly, Defendant's motion based on this ground is DENIED.

CONCLUSION

For the reasons stated above, the Court the Court DENIES Defendant's Motion to Delay Mittimus.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 13, 2007.





David Alan Ezra
United States District Judge

United States of America vs. Gary W. Rodrigues, et al., Cr. No. 01-00078 DAE;
**ORDER DENYING DEFENDANT GARY W. RODRIGUES' MOTION TO
DELAY MITTIMUS**